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PATENT APPLICATION

ATTORNEY DOCKET NO. 10012518-1



IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Julie T. Dawe

Confirmation No.: 5684

Application No.: 10/066,132

Examiner: M. Roswell

Filing Date: 01/30/2002

Group Art Unit: 2173

Title: SYSTEM AND METHOD FOR THE TRANSFERENCE OF INFORMATION REGARDING
STATUS OF AN APPLICATION PROGRAM

Mail Stop Appeal Brief-Patents
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL OF REPLY BRIEF

Sir:

Transmitted herewith in **triplicate** is the Reply Brief with respect to the Examiner's Answer mailed on Oct. 5, 2005. This Reply Brief is being filed pursuant to 37 CFR 1.193(b) within two months of the date of the Examiner's Answer.

(Note: Extensions of time are not allowed under 37 CFR 1.136(a))

(Note: Failure to file a Reply Brief will result in dismissal of the Appeal as to the claims made subject to an expressly stated new grounds of rejection.)

No fee is required for filing of this Reply Brief.

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Date of Deposit: 12/05/2005

Respectfully submitted,

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Docket No.: 10012518-1

(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Julie T. Dawe

Application No.: 10/066,132

Confirmation No.: 5684

Filed: January 30, 2002

Art Unit: 2173

For: SYSTEM AND METHOD FOR THE
TRANSFERENCE OF INFORMATION
REGARDING STATUS OF AN APPLICATION
PROGRAM

Examiner: Michael Roswell

APPELLANT'S REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

REPLY TO EXAMINER'S ANSWER UNDER 37 CFR 1.193(B)

This Reply brief is in response to the Examiner's Answer mailed October 5, 2005 and is in furtherance of the Notice of appeal, dated May 17, 2005 and received by the United States Patent Office on May 17, 2005, and Appellant's Brief, dated July 13, 2005 and received by the United States Patent Office on July 13, 2005.

Appellant respectfully requests withdrawal of the final rejection, re-opening of prosecution, and allowance of the above-captioned application. Should the Appellee not find the comments contained herein persuasive, acknowledgment of receipt and entry of this Reply Brief is requested.

I. INTRODUCTION

Claims 1, 4, 5, 7, 8, 11, 13, and 16 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Martinez et al., United States patent number 5,956,665 (hereinafter *Martinez*) and claims 2, 3, 6, 9, 10, 12, 14, 15, 17, and 18 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over *Martinez* in view of Jancke et al., United States patent 5,764,913 (hereinafter *Jancke*). Appellant has addressed aspects of the Appellee's responses set forth in the Examiner's Answer dated October 5, 2005 below.

A. Claims 1, 4, 7, and 13

In response to Appellant showing that the rejections of record do not establish that *Martinez* teaches aggregating information contained in a first data stream output in a second format by applying a first set of rules organizing the information into a plurality of categories, Appellee asserts that "claims 7 and 13 limit the first data stream as being from an application program, while claim 1 does not," the Examiner's Answer at page 7. Appellant points out, however, that each of independent claims 1, 7, and 13 recite "generating a visually perceptible output indicative of a status of an application program" Accordingly, whether reciting that the first data stream is from an application program or not, the recited "graphical representation of parameters relating to each of said categories" is clearly indicative of a status of an application program. As set forth in the claims, the information contained in the first data stream is aggregated into the recited categories. Therefore, the information contained in the first data stream is used in providing a visually perceptible output indicative of an application program status.

In contrast to the claim language, the Appellee relies upon a data stream provided by components of the system being monitored by *Martinez*, the Examiner's Answer at pages 7-8. However, these components comprise various field replaceable unit components (e.g., disk drives, environmental monitoring units, etcetera, column 5, lines 14-19), not the application program. Even if the data from these components were encapsulated into a second format and the information contained therein aggregated into a plurality of categories, a graphical representation of parameters relating to the categories would not result in a

visually perceptible output indicative of a status of an application program. Accordingly, the disclosure of *Martinez* does not meet the claims.

Appellee asserts that “Martinez discloses the limitation of a first data stream received from an application program, as the component monitoring application of Martinez creates a data stream related to the monitored components through polling operations (see col. 11, lines 21-30), and more directly from the application itself through user interaction with the component control GUI of Martinez (see col. 11, lines 31-42),” the Examiner’s Answer at page 9. However, in contrast to the foregoing, claims 7 and 13 expressly reciting “a first data stream output in a first format from said application program” Accordingly, whether an application program polls the components or a user’s interaction with a GUI ultimately results in a component providing data it cannot be said that the data is output from the application program as required by these claims.

Appellee asserts that “encapsulating of such component information into a second format and aggregating of the component information into a second format by applying a first set of rules organizing the information into a plurality of categories is shown by Martinez in the mapping of the received component data,” the Examiner’s Answer at page 8. Appellant points out that the foregoing statement is immaterial to the patentability of the present claims and is symptomatic of the Appellee having misread the claim limitations when formulating the rejections of record. The claims clearly recite “encapsulating said first data stream in said first format into a predetermined second format” and “aggregating information contained in said first data stream output in said second format . . . into a plurality of categories” Aggregating the component information into a second format does not meet the recited limitations requiring aggregating information of the first data stream, having already been output in a second format, into a plurality of categories.

In responding to Appellant’s arguments, Appellee asserts that “in order for component data to be taken from the mapping operation data structure and displayed on the GUI, a set of rules in the form of computer-readable instructions must inherently be followed to allow for the access, retrieval, ordering, and display of component related data,” the Examiner’s Answer at page 9. Appellee further asserts that “[t]his data is taken from its first format (component data stored in the mapping operation data structure) and therefrom aggregated

into a second format, one that allows for said data to be displayed on the GUI in a location corresponding to the correct component,” *id.* However, as repeatedly pointed out by Appellant, aggregating the component information into a second format does not meet the recited limitations requiring aggregating information of the first data stream, having already been output in a second format, into a plurality of categories. As such, the claims are clearly patentable over the rejections of record.

B. Claims 5 and 11

In responding to Appellant having pointed out that nothing in the rejections of record identify any aspect of *Martinez* teaching or suggesting an artistic graphical representation as set forth in claims 5 and 11, Appellant asserts that any graphical representation is in and of itself artistic, the Examiner’s Answer at page 10. Such a reading of the claim language completely ignores the express limitation “artistic,” reading only “graphical representation” and thus concluding that any graphical representation may be read as meeting the claim. However, “[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art,” see M.P.E.P. § 2143.03. Accordingly, the rejection of record, wherein the express limitation “artistic” has been read out of the claim, is improper.

Moreover, the word “artistic” has an ordinary and accepted meaning which clearly and definitely conveys meaning beyond that which all graphical representations would meet. For example, artistic is defined as “of, relating to, or characteristic of art or artists” and “showing imaginative skill in arrangement or execution,” Webster’s Ninth New Collegiate Dictionary, Merriam-Webster Inc. 1988, page 106. Clearly a mere utilitarian graphical representation falls short of an artistic graphical representation.

C. Claim 8

In response to Appellant having pointed out that *Martinez* does not teach generating an analog representation of the information, the Appellee asserts that an analog representation of data is non-functional descriptive material, the Examiner’s Answer at page 10. However, regardless of whether an analog representation of data is non-functional descriptive material or not, generating an analog representation of information is not non-functional descriptive material. Accordingly, claim 8 is asserted to be patentable over the rejection of record.

D. Claim 16

With respect to claim 16 reciting a second data stream output in a third format from the application program, Appellee asserts that *Martinez* teaches a plurality of data streams sent to and from the application program in a data format, the Examiner's Answer at page 10. However, the foregoing is insufficient to teach encapsulating a second data stream output in a third format from the application program into a second format. In contrast to the language of the claim, Appellee has continued to rely upon data provided by the various field replaceable unit components of *Martinez* rather than any data provided from an application program to meet this aspect of the claims. Accordingly, the rejection of record is improper.

E. Claims 2, 9, 14, and 17

In addressing the aural representation of parameters of the categories in respond to changes in the information as variously recited in claims 2, 9, 14, and 17, Appellee asserts that "incorporation of the aural notification of Jancke into Martinez would take place in the area where changes are brought to the user's attention, in this case, with respect to component parameters and their subsequent changes, each parameter relating to a category," the Examiner's Answer at page 11. *Jancke* teaches that "a sensory stimulus such as an audio tone or wave file can be generated to notify a human user of the operational state of a selected one of the nodes in the network," column 3, lines 54-57 (emphasis added). Assuming, *arguendo*, that Appellee's foregoing assertion were accurate, the combination of *Martinez* and *Jancke* would not result in an aural representation of parameters relating to each of the categories. Accordingly, the rejection of record is improper.

Appellant has shown in the Appeal Brief that the stated motivation for modifying *Martinez* in view of *Jancke* is circular (it is obvious to add aural notification because it is obvious to have aural notification). Appellee responds to the foregoing by further stating that "the incorporation of aural notification into the GUI of Martinez would be preferable, as it would afford a user with the option of directing his visual attention elsewhere, while still being able to stay up-to-date on the status of component data, which is certainly a desirable feature," the Examiner's Answer at page 11. Although Appellee has correctly stated that the claimed feature is desirable, the desirability of such a feature comes not from the applied art

but rather from Appellant's own disclosure, see e.g., paragraph 0028. The teaching or suggestion to make the claimed combination must be found in the prior art, not in Applicants' disclosure. See M.P.E.P. §2143, citing *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Thus, the motivation to combine provided by Appellee is improper, as the motivation must be described in a prior art reference and must detail the benefits of such a modification.

II. CONCLUSION

For the reasons set forth in the Appeal Brief dated July 13, 2005, and as supplemented above, Appellant respectfully contends that each of claims 1-18 are patentable over the applied art. Therefore, Appellant respectfully requests that the Board reverse the final rejections of record so that the present claims may pass to issue.

Appellant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 08-2025, under Order No. 10012518-1 from which the undersigned is authorized to draw.

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